THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MARGARITA CRUZ-TORRES,	)	
Employee	)	
	)	OEA Matter No.: J-0331-10
v.	)	
	)	Date of Issuance: January 4, 2011
DEPARTMENT OF	)	
PARKS AND RECREATION,	)	
Agency	)	SOMMER J. MURPHY, Esq.
	)	Administrative Judge

Maragrita Cruz-Torres, Employee
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 12, 2010, Margarita Cruz-Torres ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA") contesting the Department of Parks & Recreation's ("Agency") decision to terminate her. Agency's notice, dated July 9, 2010, informed Employee that she was being separated from service because of the expiration of her term appointment. Employee's termination was effective on July 26, 2010.

This matter was assigned to me on or around August 10, 2010. I issued an Order on September 24, 2010, directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee was also notified that the appeal would be dismissed if she failed to respond to the Order by October 10, 2010. Employee submitted a response to the Order on October 4, 2010. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether this Office has jurisdiction over this matter.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." OEA Rule 629.1, states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

> "An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee…an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more…or a reduction in force…."

District Personnel Manual § 826.1 further states that "[t]he employment of an individual under a temporary or term appointment shall end on the expiration of the appointment, on the expiration date of an extension granted by the personnel authority, or upon separation prior to the specified expiration date in accordance with this section." An employee serving under a term appointment will not acquire permanent status on the basis of the term appointment and shall not be converted to a regular Career Service appointment without further competition, unless eligible for reinstatement.[1]

Under D.C. Personnel Regulations, Chapter 16, Part I, § 1600, adverse action protections are afforded to Career Service Employees. Section 1600.3 specifically provides that employees serving a term appointment are excluded from coverage. Therefore, the notice requirements and other protections applicable to Career Service employees who are subjected to an adverse action are not applicable to term employees.[2] As a result, employees will remain "at-will" during the duration of their appointments.

In this case, Employee was hired as a term employee. In accordance with DPM § 826.1, *supra*, Employee's appointment was set to terminate on the expiration date of her appointment. Agency, however, chose to terminate Employee during a time which she remained at-will and could be terminated at any time. Employee was not converted to Career Service during the time

[1] District Personnel Manuel § 823.7.
[2] *Carolyn Brooks v. D.C. Public Schools, Opinion and Order on Petition for Review* (July 30, 2010).

of her appointment. Therefore, this Office does not have jurisdiction over Employee's appeal. For these reasons, the petition for appeal must be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ
ADMINISTRATIVE JUDGE